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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/805,023	03/18/2004	Hirokazu Ikeda	16869K-111100US	9205
20350 7590 01/08/2008 TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			EXAMINER NGUYEN, TAN D	
			ART UNIT 3629	PAPER NUMBER
			MAIL DATE 01/08/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/805,023	Applicant(s) IKEDA ET AL.	
	Examiner Tan Dean D. Nguyen	Art Unit 3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 October 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 21,23-25,27 and 28 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 21,23-25,27 and 28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/29/07 has been entered.

### ***Response to Amendment***

The amendment filed 10/29/07 has been entered. Claims 21, 23-24 (method) and 25, 27-28 (apparatus) are pending and are rejected as followed. Claims 22 and 26 have been canceled.

### ***Claim Objections***

2. Claims 23 and 27 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. It's not clear the relationship of "job set" in these dependent claims vs. "job" in the independent claims. Furthermore, these claims the items are written in passive voice/state which are vague and indefinite and not clear how these further limit the method steps or elements of the independent claims. Conversion of the claim language to positive active state is recommended to improve clarity and overcome the rejections.

***Claim Rejections - 35 USC § 112***

3. Claims 23-24 and 27-28 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. It's not clear the relationship of "job set" in these dependent claims vs. "job" in the independent claims. Furthermore, these claims the items are written in passive voice/state which are vague and indefinite and not clear how these further limit the method steps or elements of the independent claims. Conversion of the claim language to positive active state is recommended to improve clarity and overcome the rejections.
4. In claims 24 and 28, the phrase "comparing the job" with the changed condition information" is vague, a job is a process or task and can not be compared to an information. Maybe the "parameters of the job".

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:
- (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:
1. Determining the scope and contents of the prior art.

2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

**8. Claims 21, 23-24 (method), 25, 27-28 (apparatus) are rejected under 35 U.S.C. 103(a) as being unpatentable over (1) VACANTE et al in view of (2) HAYASHI et al.**

As of 10/29/07, independent method claim 21 is as followed:

21. (Previously Presented) A job controlling method in a computer system which includes a host computer and a storage apparatus, comprising:

(a) storing condition information including a plurality of conditions for controlling the host computer or the storage apparatus;

(b) defining a job for executing a process for the host computer or the storage apparatus with a parameter for executing;

(c.) calculating an inconsistency degree of the defined job with the condition information by comparing the parameter of the job with the condition information;

(d) outputting result of comparison of the parameter of the job with the condition information, the result including an inconsistency degree;

(e1) if the inconsistency degree is within a predefined threshold, then executing the job according to the parameter; and

(e2) if the inconsistency degree is not within the predefined threshold, then changing the parameter of the job according to the result of the comparison and recalculating the inconsistency degree.

Note, for convenience, letters (a)-(e) (e1 or e2) are added to the beginning of each step.

Note that in view of steps (b)-(d) and (e2), the term "job" in (b) is merely an item such as information or data and the subsequent phrase "for executing a process for the host computer or the storage computer" is considered as non-functional descriptive material and carries no patentable weight. This phrase merely "describes the function of the job" and thus having no patentable weight. Step (c) below (b) basically calls for comparing two data, one is the parameter data of the job and two is the condition information data. There is no step for "executing a process" in the claim. There is "executing the job", but not "the process" in (e1) but this is optional since there is (e2) which bypass (e1).

Similarly, VACANTE et al which deals with a method for controlling an information processing system {see Fig. 1}, comprising the steps of:

(a) storing a condition information processing system including a provision to policies each of which defines a process to be executed in the system, wherein the strategy is a control (precedent) policy to manage network traffic {see col. 1, lines 55-57, col. 3, lines 8-38, Fig. 2},

(b) defining a job for executing a process for the host computer or the storage apparatus with a parameter for executing (managing traffic of the network) {see col. 1, lines 12-57, col. 4, lines 30-65}; and

(e) changing said parameters so that said policies meet the control (precedent) strategy when said parameters are set to said processes defined in said policies", {see col. 1, lines 55-65, col. 4, lines 30-55}

(e2) changing configuration as necessary to implement the policy {see Fig. 4, 460, col. 1, lines 60-65, col. 4, lines 55-67, "...until corrected, the network may be handicapped in its ability to carry traffic... user to correct....", col. 5, lines 1-45}.

Note that VACANTE et al discloses on col. 3, lines 39-60, that a policy is abstract set of rules containing conditions information which, when evaluated, determine how traffic on a network is to be handled. On Figs. 3-4, VACANTE et al also teaches the evaluation, testing and changes of various targets (job parameter) with the policy. Therefore, even though VACANTE et al discusses about the changing in policies information, the changes in conditions or targets which affect the policies, it would have been obvious to a skilled artisan to use other type of information such as parameter of the job with the condition information as mere using other type of information which would affect how the traffic is managed (job parameter).

VACANTE et al fails to teach steps (c.), (d) and (e2) according to the comparison and recalculating the inconsistency degree.

In a similar method for system for approximate reasoning, HAYASHI et al teaches steps (c.), (d) and (f) for the benefits of obtaining more accurate results of reasoning (comparing analysis) by applying weight to the knowledge of each data {see col. 2, lines 40-65, col. 3, lines 7-55, col. 4, lines 10-60, Figs. 10-18}. It would have been obvious to modify the teachings of VACANTE et al by adding steps (c.), (d) and (f) as taught by HAYASHI et al to obtain the cited benefits of more accurate results of reasoning or comparing analysis.

As for dep. claim 23 (part of 21 above), which deals with well known job controlling parameters, i.e. outputting results for effective monitoring, it would have been to do so to effectively monitor the changes.

As for dep. claim 24 (part of 21 above), which deals with well known job controlling parameters, i.e. repeating steps (e) and (f), these are well known steps and are taught in col. 3, lines 30-60.

As for **independent apparatus claim 25**, which is merely the apparatus to carry out the method claim 21 above, it's rejected over the apparatus of VACANTE et al and HAYASHI et al to carry out the rejections of the steps of claim 21 above. Moreover, it would have been obvious to a skilled artisan to set up respective apparatus to carry out the method claim 21 above.



As for dep. claims 27-28 (part of 25 above), which have the same limitations as in dep. claims 23-24 (part of 21 above), they are rejected for the same reasons set forth in dep. claims 23 and 24 above.

**9. Claims 21, 23-24 (method), 25, 27-28 (apparatus) are rejected (2<sup>nd</sup> time) under 35 U.S.C. 103(a) as being unpatentable over (1) AHLSTROM et al in view of (2) VACANTE et al and (3) HAYASHI et al.**

Similarly, AHLSTROM et al which deals with a method for controlling an information processing system {see Fig. 2A}, comprising the steps of:

(a) storing a strategy of the information processing system including a provision to policies each of which defines a process to be executed in the system, wherein the strategy is a control (precedent) strategy {see col. 3, lines 40-50},

(b) defining a job for executing a process for the host computer or the storage apparatus with a parameter for executing {see col. 3, lines 40-50}; and

(e) changing said parameters so that said policies meet the control (precedent) strategy when said parameters are set to said processes defined in said policies", {see col. 5, lines 34-35, col. 9, lines 14-18, or lines 30-36} and

(e2) re-determining the policy conflict or conflict resolution {see Fig. 2A, loops (208), (210) and (212)}.

AHLSTROM et al fails to teach steps (c.), (d) and (f).

Note that VACANTE et al discloses on col. 3, lines 39-60, that a policy is abstract set of rules containing conditions information which, when evaluated, determine how traffic on a network is to be handled. On Figs. 3-4, VACANTE et al also teaches the

evaluation, testing and changes of various targets (job parameter) with the policy.

Therefore, even though VACANTE et al discusses about the changing in policies information, the changes in conditions or targets which affect the policies, it would have been obvious to a skilled artisan to modify the teachings of AHLSTROM et al by using other type of information such as parameter of the job that affect the policy such as job parameter (condition information) as taught by VACANTE et al as mere using other type of information which would affect how the traffic is managed (job parameter).

AHLSTROM et al /VACANTE et al fails to teach steps (c.), (d).

In a similar method for system for approximate reasoning, HAYASHI et al teaches steps (c.), and (d) for the benefits of obtaining more accurate results of reasoning (comparing analysis) by applying weight to the knowledge of each data {see col. 2, lines 40-65, col. 3, lines 7-55, col. 4, lines 10-60, Figs. 10-18}. It would have been obvious to modify the teachings of VACANTE et al by adding steps (c.) and (d) as taught by HAYASHI et al to obtain the cited benefits of more accurate results of reasoning or comparing analysis.

As for dep. claim 23 (part of 21 above), which deals with well known job controlling parameters, i.e. outputting results for effective monitoring, this is taught in AHLSTROM et al col. 1, lines 20-30, Fig. 1 (120).

As for dep. claim 24 (part of 21 above), which deals with well known job controlling parameters, i.e. repeating steps (e1) and (e2), these are well known steps and are taught in AHLSTROM et al Fig. 2A.

As for **independent apparatus claim 25**, which is merely the apparatus to carry out the method claim 21 above, it's rejected over the apparatus of AHLSTROM et al /VACANTE et al and HAYASHI et al to carry out the rejections of the steps of claim 21 above. Moreover, it would have been obvious to a skilled artisan to set up respective apparatus to carry out the method claim 21 above.

As for dep. claims 27-28 (part of 25 above), which have the same limitations as in dep. claims 23-24 (part of 21 above), they are rejected for the same reasons set forth in dep. claims 23 and 24 above.

### ***Response to Arguments***

10. Applicant's arguments of 10/20/07 with respect to claims 21, 23-25, 27-28 have been considered but are not persuasive. Applicant's major argument is that the references used in the rejections above fail to teach "defining a job for executing a process for the host computer or the storage apparatus with a parameter for executing". This is not found persuasive because, as indicated above, in view of steps (b)-(d) and (e2), the term "job" in (b) is merely an item such as information or data and the subsequent phrase "for executing a process for the host computer or the storage computer" is considered as non-functional descriptive material and carries no patentable weight. This phrase merely "describes the function of the job data/information" and thus considered as non-functional descriptive material and having no patentable weight. Step (c) below (b) basically calls for comparing two data, one is the parameter data of the job and two is the condition information data. There is no

step for "executing a process" in the claim. There is "executing the job", but not "the process" in (e1) but this is optional since there is (e2) which bypass (e1). There is no step for "executing a process" so the argument of applicant is not persuasive.

No claims are allowed.

11. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct@uspto.gov>. Should you have any questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

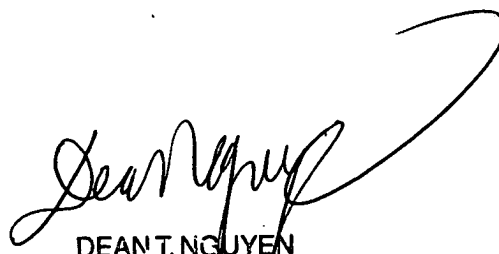
In receiving an Office Action, it becomes apparent that certain documents are missing, e. g. copies of references, Forms PTO 1449, PTO-892, etc., requests for copies should be directed to Tech Center 3600 Customer Service at (571) 272-3600, or e-mail [CustomerService3600@uspto.gov](mailto:CustomerService3600@uspto.gov).

Any inquiry concerning the merits of the examination of the application should be directed to Dean Tan Nguyen at telephone number (571) 272-6806. My work schedule is normally Monday through Friday from 6:30 am - 4:00 pm. I am scheduled to be off every other Friday.

Should I be unavailable during my normal working hours, my supervisor John Weiss can be reached at (571) 272-6812.

The main FAX phone numbers for formal communications concerning this application are (571) 273-8300. My personal Fax is (571) 273-6806. Informal communications may be made, following a telephone call to the examiner, by an informal FAX number to be given.

dtn  
January 7, 2008



DEAN T. NGUYEN  
PRIMARY EXAMINER